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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/789,296	02/27/2004	Timothy A. Otterlee	R122 1020.2	7621

7590 04/07/2006  
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EXAMINER

VANAMAN, FRANK BENNETT

ART UNIT	PAPER NUMBER
3618	

DATE MAILED: 04/07/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 10/789,296	<b>Applicant(s)</b> OTTERLEE ET AL.	
	<b>Examiner</b> Frank Vanaman	<b>Art Unit</b> 3618	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

1) ☒ Responsive to communication(s) filed on 27 March 2006.

2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.

3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

4) ☒ Claim(s) 1-37 is/are pending in the application.

4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.

6) ☒ Claim(s) 1-37 is/are rejected.

7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.

8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

9) ☒ The specification is objected to by the Examiner.

10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
     Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
     Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
     a) ☐ All    b) ☐ Some \*    c) ☐ None of:  
         1. ☐ Certified copies of the priority documents have been received.  
         2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
         3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____.	4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s)/Mail Date. _____. 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) 6) <input type="checkbox"/> Other: _____.
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### **Election/Restrictions**

1. Applicant's election without traverse of Species I in the reply filed on March 27, 2006 is acknowledged. Applicant has identified claims 1-37 as being readable on the elected species.

### **Specification**

2. The disclosure is objected to because of the following informalities: on page 4, line 12, it appears as though "our" should be - -or- -.

Appropriate correction is required.

### **Claim Rejections - 35 USC § 112**

3. Claim 3 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. In claim 3, line 2, "the seat chamber" lacks a clear antecedent basis-- compare to claim 1, line 3, for example.

### **Claim Rejections - 35 USC § 102**

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

5. Claims 12-19, 22-37 are rejected under 35 U.S.C. 102(e) as being anticipated by McCue et al. (US 6,513,817, filed 2/20/2002; provisional filing 2/23/2001). McCue et al. Teach a shopping cart having a theme-shaped, molded plastic body (note at least col.

5, line 40; col. 6, lines 59-60) integrally formed so as to define a seat portion (proximate 24, 26, 27) which includes a front section (proximate 31) and rear section (proximate 25), and at least two lateral sides thereof (e.g., proximate 36), and a basket section (proximate 28) having a front (end of 12, proximate 25) and rear (proximate 31, 20), the seat having a back (24) positioned such that an occupant faces the front portion of the seat section; a non-movable basket (12) being constructed from a wire material and having a bottom portion (e.g., bottom of 12) lower than at least an upper portion of the seat back, the basket being covered on lateral sides by a basket portion (e.g., at 28) of the body (compare figures 2 and 3), and positioned such that the basket front is proximate the front of the basket accommodating portion of the frame (e.g., 28, just rearwardly of 25), a frame (38) having at least 3 wheels (34/35) coupled thereto, further including a panel (40) coupled to the body, and taught to be mounted thereto, and as such understood to be demountable therefrom, which defines a front boundary of the seating portion.

#### **Claim Rejections - 35 USC § 103**

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claims 1, 2, 4-11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lobban et al. (Des. 461,612, filed 11/2001). Lobban et al. Teach a cart having a outer body with a rearward seating portion and a forward basket accommodating portion, which further may include a basket (see figures 10-11-12) having a bottom which is positioned forwardly of, and below the seat portion, further including plural wheels (see figure 3) wherein plural wheels are attached to a frame element (at least U-shaped element connecting laterally spaced wheels in figure 3); the body having a themed appearance (figure 5), and having respective side portions covering at least a

portion of each lateral side of the basket (see figure 12). As regards claims 1 and 4, the reference to Lobban et al. fails to explicitly teach the body as constituting a molded plastic. Molded plastics are very old and well known in the cart fields for their low cost, light weight and high durability, and as such, it would have been obvious to one of ordinary skill in the art at the time of the invention to construct the body from a molded plastic to maintain a low cost of the cart, while additionally facilitating light weight.

As regards claim 5, the reference to Lobban et al. fails to teach six wheels on the cart. To adjust the number of an already-taught item in the prior art for the purpose of enhancing or multiplying its effect is understood to be within the skill of the ordinary practitioner, and as such, it would have been obvious to one of ordinary skill in the art at the time of the invention to provide six wheels in order to reduce the weight-distribution per wheel.

As regards claims 7 and 8, The reference to Lobban et al. fails to teach the specific percentage of coverage of the basket by the side walls of the basket portion of the body. When a general condition is disclosed, it is not beyond the skill of the ordinary practitioner to adjust the degree of the condition absent any teaching to the contrary, and as such, it would have been obvious to one of ordinary skill in the art at the time of the invention to adjust the coverage of the basket by the side portions of the body from between 10% and 40% for the purpose of adjusting the amount of material required to construct the body, or for adjusting the outer side appearance of the overall cart.

As regards claim 9, the reference to Lobban et al. fails to teach the material of the basket portion as being wire mesh. Wire mesh is very old and well known as a basket material, due to its ready availability and low cost, and as such, it would have been obvious to one of ordinary skill in the art at the time of the invention to make the basket from a wire mesh for the purpose of providing a low cost basket using omonly available materials.

8. Claim 3 is rejected under 35 USC 103(a) as being unpatentable over Loban et al. in view of McCue et al. (cited above). The reference to Lobban et al. is discussed above and fails to teach the provision of a panel coupled to the body o define a front wall of a

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seating area. McCue et al. teach a cart having a seating space (24, 25, 27) wherein a front thereof is defined at least by a console panel (40) having at least an entertainment device, mounted to a front of the seating space. It would have been obvious to one of ordinary skill in the art at the time of the invention to provide a console as taught by McCue et al. in front of the seat taught by Lobban et al. for the purpose of providing an entertainment device for the occupant of the seat.

9. Claims 20 and 21 are rejected under 35 U.S.C. 103(a) as being unpatentable over McCue et al (cited above). The reference to McCue et al. is discussed in detail above and fails to teach the specific percentage of coverage of the basket by the side walls of the basket portion of the body. When a general condition is disclosed, it is not beyond the skill of the ordinary practitioner to adjust the degree of the condition absent any teaching to the contrary, and as such, it would have been obvious to one of ordinary skill in the art at the time of the invention to adjust the coverage of the basket by the side portions of the body from between 10% and 40% for the purpose of adjusting the amount of material required to construct the body, or for adjusting the outer side appearance of the overall cart.

### Conclusion

10. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Gallagher (US 2,443,236), Parsons (US 3,346,271), Schray (US 3,497,234), Trubiano (US 3,885,806), Badger (US 4,632,411), Doty (US 5,312,122), and Gerber et al. (US 5,425,546) teach cart structures of pertinence.

11. Any inquiry specifically concerning this communication or earlier communications from the examiner should be directed to F. Vanaman whose telephone number is 571-272-6701.

Any inquiries of a general nature or relating to the status of this application may be made through either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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A response to this action should be mailed to:

Mail Stop \_\_\_\_\_  
Commissioner for Patents  
P. O. Box 1450  
Alexandria, VA 22313-1450,

Or faxed to:

PTO Central Fax: 571-273-8300

**F. VANAMAN**  
**Primary Examiner**  
**Art Unit 3618**



4/14/06